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YLS Commencement Address
May 19, 2014

1.

Graduates, it is a tremendous pleasure to join you, your family and friends today. In this season of controversial commencement speakers, I'm just glad not to have been disinvited, though I see Dean Post has a stage hook at the ready in case I go off the rails.

This is, of course, a day of celebration. I want to invite you to make it a day of reflection as well. And this is a moment to consider not just what you have accomplished as students, scholars, and practitioners, but who you have become as people, and how you can best deploy your talents in a world of overwhelming, even unbearable need.

Amidst all the speeches and fanfare, the most important voice for you to hear today is your own. Graduation can feel like an anointment—especially from a place like Yale Law School—as if only now, with the donning of your robes and the conferral of your degrees, have you become something. But each of you was already something when you first walked into this place: fully formed individuals, people deeply engaged in the world and the world of ideas, with a sense of self, of place, a mode of thinking and ways of understanding the complexity of human experience. Our hope for you has been that you would deepen those engagements through immersion in law. For many of you, you have succeeded wildly in this endeavor. But for some of you, I suspect that law school may also have been a place where you lost touch with that sense of self, as you were exposed to, or indoctrinated by,

law's methods, operating assumptions, and methodologies—what we benignly call the process of “thinking like a lawyer.” You may also have felt like your world narrowed, and that your fully formed self was reduced to the dimensions of law. I want to invite you to reacquaint yourselves with your *earlier* selves, the people you were before coming to law school. And I want to suggest that while law school undoubtedly has changed you, socialized you into a profession, and rendered you all, temporarily, a uniform sea of black robes and mortar boards, this is a moment to listen to your individual voice, express your unique self, and make your own happiness. The story of who you are, and of the life you live, now includes your law school experience, but is not limited to it. To chart your own life path, you need to tell your own story, and do so in your own vernacular.

As you do this, you undoubtedly will encounter moments that defy easy comprehension. Through much of your time in law school, we have taught you to have answers to difficult questions. By implication, not having a ready answer can feel like failure. However, I want to disabuse you of that notion, and talk today about the productivity of the inarticulate moment.

2.

I speak to you today as a new parent. My son Zayn was born on February 3, and because I have been on leave, I have missed your last semester of law school. For this reason, I am especially glad to join you today. To all the parents here today, I can only imagine how proud you must feel. I feel proud each time my son burps, but your daughters and sons have accomplished something even more impressive.

Parenthood has put me in a contemplative, if somewhat sleep-deprived mood. I suspect many of you found yourselves in a similar state this morning, though perhaps for different reasons. Staring at our son's face in the middle of the night, doing my best to remain in that moment of sublime stupor, I can't help but wonder who he will grow up to be. I hope that he has the fine character, the discernment, and the deep compassion that I have seen in my students. I worry about the world he will grow up in. And I am also overwhelmed by the privilege into which he was born: a loving family with the means to raise and educate him, outstanding medical care, abundant food, in a free society. When Zayn was born, Guido offered him a clerkship in his chambers—further evidence of the breakdown of the clerkship hiring plan. Knock on wood, his life, like yours, will be rich with opportunity.

I am mindful of my family's generational proximity to less fortunate circumstances. I remember being in college and talking to my mother about a study I had read showing that girls in Bangladesh received fewer calories per meal than boys did. This was a shocking discovery for me, but my mother didn't need an academic paper to tell her this; when she was growing up in Pakistan, her father and brothers always ate first, and she, her mother and sisters ate whatever was left after clearing the dishes. "Of course we got fewer calories," she told me, somewhat impatiently. Gender-based hunger was not some abstract sociological phenomenon, it was a lived experience whose pangs echoed in my own household, even though I had not previously heard them.

There is an expression in Urdu, my parents' first language, which was directed at me a lot when I was a kid: *aap ka jawaab nahin*. It translates literally as "There is no answer to you," though depending on context, it can be either complimentary—as in, "there's no topping you"—or derisive, as in "you have an answer for everything." It was the derisive meaning that was usually intended for me. When I learned of my mother's childhood experience of routine hunger, I had no answer. It was a profoundly inarticulate moment. For decades now, I have meditated on that moment, seeking to make it intelligible. In many ways, it has animated the choices I have made to work in the fields of civil rights, human rights, and development. I am still searching for the right language. But I've come to realize that the uncomprehending moment can be even more powerful than the moment of comprehension.

3.

And so from my story to yours. In preparation for my comments today, I asked the graduating class to think back to their reasons for coming to law school. Here are excerpts of some of the responses I received:

- One of you said: "I came to law school because I had felt and witnessed injustice and wanted to do something about it - including addressing injustice in how the law metes out . . . justice [and injustice]."
- Another wrote: "I came to law school because I felt powerless, and I believed that a law degree would give me at least a basic toolset to know where to begin to provide people with some useful help."

- “I came to law school to be an advocate for children and hoped law school would help me figure out if being a lawyer is what I really wanted to do.”
- One wrote: “I came to law school ... to get a grounding in law to better understand the practical limitations and possibilities of human rights from a lawyer's perspective, and to hopefully be a more effective scholar and advocate as a result.”
- And another: “I wanted to become a lawyer or law professor. My main aspiration was to earn a living doing work that I enjoy.”

One can hear in these statements a clear-eyed optimism, a pragmatic sense of the possibilities for self-improvement and bettering the world, and a hope that law would be a powerful tool to bring such changes about. In your hands, law would change the world, but did the law also change you?

I am guessing that at some point since you arrived at the Law School, a non-lawyer friend or family member has said to you, “You are speaking like a lawyer.” And I’m quite certain that it was not meant as a compliment. Instead, it reflected a change in your vocabulary, diction, and speaking style, and ultimately your thinking. It was an accusation that you had become formalistic and argumentative.

I remember the anxiety that such an accusation produced in me. Perhaps some of you have felt a similar anxiety. Language changes us – it is not just an instrument for communication, but a mode of self-expression, and as such it helps to constitute the self as well. How we understand ourselves and the world, and how we describe them—it’s difficult to say where language ends

and the self begins. And so law's language can feel like a displacement of your authentic self.

But once you recognize that law is just one of several languages you speak, then you can accept it as a multiplying force in your understanding of the world rather than a totalizing one. Law becomes a facet of your identity and not its entirety.

4.

In the past three years, we have taught you how to translate problems in the world into claims in the law. We have pressed you to articulate your arguments clearly and concisely, to stake and defend your positions, to think quickly on your feet. We have privileged the incisively framed question and the crisply delivered response. From the classroom to the dining room, from moot court to superior court in New Haven, the Supreme Court in Hartford, the Second Circuit Court of Appeals in New York, and even the U.S. Supreme Court, you have mastered these essential skills of intellectual engagement, persuasion, and lawyering. This is the best of what it means to speak like a lawyer.

Now, with these core competencies under your belts, I want to encourage you to push beyond the space of ready articulation. Each of you is immensely talented, and your talents are most needed on the problems we don't yet comprehend, the ones that resist easy articulation, the ones we might not yet have the language to describe. You are poised not merely to apply the language of law to a complex world, but to develop new vocabularies and grammars, so as to constitute new worlds beyond our

current horizons, at the limits of our imagination. To do this, I urge you to embrace the inarticulate moment.

Several years ago, my students, a colleague and I represented a young man detained at Guantanamo. He was 15 years old at the time he was taken into U.S. custody in Afghanistan, 16 when he was transferred to Guantanamo, and 18 when I first met him. After years of imprisonment, my colleague and I were the first people to come see him for a reason other than interrogation. One day, about a year into our representation of him, I was at Guantanamo to visit him. I drove through the checkpoints to Camp Delta, passed through security, and sat in a cinder block room to wait for him to arrive. And then I was told he did not want to see me. I was stunned. I was his lawyer, his advocate, his partisan. I wrote him a note, sent it to him, and waited. Still, he refused. I tried one more time, without success. And so I left, returned to my room, and wondered how I would pass the day at Guantanamo Bay now that my client had refused to see me.

Confounded by my client's decision, and with nothing else to do, I went to the military PX, bought a pair of running shoes, put on my iPod and went for a run. As he sat in solitary confinement a few miles away, I jogged the perimeter of the Guantanamo golf course while listening to U2, and tried to wrap my head around what had just happened. Once more, I was at the limits of language, an inarticulate moment.

It would take many months before I gained a full understanding of what had happened. I had assumed that in the legal black hole of Guantanamo, my client would be grateful for a lawyer. But my client had effectively flipped

that assumption, as if to say, what good is a lawyer in a legal black hole? Are lawyers help or hindrance in a system that defies legal order? These are difficult and important questions that continue to bedevil lawyers and clients at Guantanamo, but it was only by embracing the inarticulate moment that the questions could be framed.

Part of the reason I am so confident in your ability to work at the limits of language is that I have already seen you do it. You have done remarkable, transformative work during your time here. You have freed people from jail and stopped their deportations. You have influenced the direction of law and policy from the local to the international levels. You have changed people's lives, altered institutional structures, and appreciated the inextricable links between the two. You have generated new theoretical insights and produced novel legal scholarship. And you have found in one another serious, thoughtful and respectful interlocutors with whom you have been willing to push the limits of your own understandings: As one of you wrote to me about working on a journal:

What I found really affirming about the Journal was the seriousness with which students talked to each other, reexamined their processes, and made an effort to understand what was going wrong and how it could be fixed. It seems small, but I had more deep conversations about what kinds of diversity mattered and why, structural racism, sexism, and classism, and tacit assumptions about meritocracy and privilege than I did in any of my other activities or courses at YLS.

Once we encounter the inarticulate moment, how do we deal with it? One approach lies in what Judith Butler has termed the “performative contradiction,” a pairing of seemingly oppositional terms in order to envision new understandings of the universal. Think, for example, of the claim of DREAMers that they are undocumented citizens—the notion that the very population categorically excluded from citizenship in fact has a claim to it. Two decades ago, gay marriage might have been considered a performative contradiction as well. The pioneering of new language is a form of contestation, and can help us to anticipate new and more inclusive realities. And so we can move from the inarticulate moment to an articulate one.

When the inarticulate moment presents, we might also consider what it means to *listen* like the lawyer you have been trained to be: listening to and developing deep, trust relationships with your clients, appreciating context, hearing the call of theory and the echoes of history before attempting to render the moment in language.

Because language is only ever approximate, because it attempts to capture human experience but is, perennially, inadequate to the task, because language and the human condition are bound up in one another, we are forever in need of new vocabularies. My hope is that by learning law’s language, and developing a sophisticated ear, you have learned how to develop new languages of your own. The limits of language are merely frontiers.

5.

In closing, I want to encourage you to continue developing your life stories, and confronting the inarticulate moments that will arise, with the friends you have made here. As one of you wrote, reflecting on your most meaningful experiences at the Law School:

[T]he moments that stand out are the times when I felt the sense of the amazing community that we have here. I remember the congratulatory e-mails after my first time speaking in a big lecture class; or how the most unexpected people remembered and inquired after I gave an oral argument for clinic; and, of course, the genuine excitement I feel when one of my classmates does something amazing. The periodic reminders that we were all in this together elevated the entire law school experience. It became joyful.

As another student wrote: “My hope as I leave here is that I’ll never assume that deep reflection and meaningful action are mutually exclusive, and that I’ll always remember how profoundly each can fertilize and enrich the other.”

And one more student reflection: “I hope to make a positive difference in the world, without losing a sensibility of optimism about human nature, open-mindedness, or creativity. I also hope I will find a quality of thought and

friendship like the one I've enjoyed here where I live, where I work, and where I struggle with my future challenges. I hope success as a lawyer will go hand-in-hand with my self-realization as a full and fulfilled human being."

These are my hopes for you, too.

Finally, as my mom would say, *aap ka jawaab nahin*. There is no answer to you. And I mean that in the good way.

Congratulations.